

COURT OF APPEALS OF OHIO, SIXTH APPELLATE DISTRICT, LUCAS COUNTY

Grant-Ross v. Dunsmore

2023-Ohio-1414 (Ohio Ct. App. 2023) · No. L-22-1030 · Decided April 28, 2023

SUMMARY

The Sixth District Court of Appeals reviewed a forcible entry and detainer action arising from a disputed real estate sale and payment by cashier’s check. The court held that the municipal court had jurisdiction to determine present possession and, incidentally, title, affirmed judgment for the seller, and modified the judgment by invalidating the nunc pro tunc language and striking an improper directive concerning recording possession with the county auditor. A dissent would have reversed and remanded, reasoning that the municipal court improperly resolved ownership and title disputes beyond the scope of a forcible entry and detainer proceeding.

CASE DETAILS

COURT	Court of Appeals of Ohio, Sixth Appellate District, Lucas County
WRITING FOR THE COURT	Myron C. Duhart, P.J.; Thomas J. Osiowk, J.; Gene A. Zmuda, J.
JURISDICTION	Ohio
DECIDED	April 28, 2023
DOCKET	L-22-1030
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appellant appealed the Toledo Municipal Court's final judgment dismissing her forcible entry and detainer action and awarding possession to appellee. The court of appeals affirmed the judgment with modifications.
STANDARD OF REVIEW	Subject-matter jurisdiction is reviewed de novo. The appellate court reviewed the trial court's judgment under App.R. 12(A)(1)(a), which authorizes affirmance, modification, or reversal.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals opinion
PARTIES	April Grant-Ross v. Diana Dunsmore

TOPICS

- subject matter jurisdiction
- eviction
- appellate procedure
- civil procedure
- real estate

PRACTICE AREAS

civil procedure

real estate

contracts

remedies

appellate procedure

QUESTIONS PRESENTED

1. Whether the municipal court had subject-matter jurisdiction in a forcible entry and detainer action to determine which party had the right to present possession and, incidentally, which party held present title.
2. Whether the trial court improperly relied on new evidence presented in objections to the magistrate's decision.
3. Whether the trial court exceeded its jurisdiction by directing appellee to record transfer of possession with the Lucas County Auditor.
4. Whether the trial court's nunc pro tunc judgment improperly amended its original judgment rather than merely recording judicial action previously taken.

HOLDINGS

1. A municipal court has subject-matter jurisdiction under R.C. 1901.18(A)(8) to hear a forcible entry and detainer action and may determine which party has the right to present possession. When possession depends on title, the municipal court may determine in whom present title rests as an incident to deciding possession, but the proceeding is not an independent quiet-title action.
2. The trial court did not improperly rely on new evidence because the seller did not introduce new evidence through her objections; her position that she had not received the required consideration and that the deed was invalid had been consistently presented.
3. The nunc pro tunc judgment was invalid because it purported to amend and correct the original judgment rather than merely record judicial action previously and actually taken.
4. The municipal court exceeded its jurisdiction by ordering appellee to record transfer of possession with the Lucas County Auditor, and that sentence had to be stricken from the final judgment.

KEY QUOTATIONS

“Whether a court has subject-matter jurisdiction over a certain matter is a question this court reviews de novo.” (¶ 33)

“A forcible entry and detainer action is a statutory proceeding used to determine the right to present possession of real property.” (¶ 35)

“However, when ‘possession is dependent on title, it is the present title which controls. In such an action, the [municipal] court as an incident to determining the right to possession may determine in whom the present title rests.’” (¶ 36)

“Judgment affirmed, with modifications.” (¶ 44)

FACTUAL BACKGROUND

Grant-Ross and Dunsmore entered into a contract for the purchase of Dunsmore's house for \$147,500. Grant-Ross paid off Dunsmore's \$59,000 equity line and delivered an \$88,500 cashier's check through her attorney, but a stop-payment order was later issued before Dunsmore received the funds. Dunsmore had executed and delivered a quitclaim deed, which was recorded, but she remained in possession; Grant-Ross then served a three-day notice and filed a forcible entry and detainer action.

PROCEDURAL HISTORY

Grant-Ross filed a forcible entry and detainer action in Toledo Municipal Court after the parties' real-estate transaction failed when payment was stopped. A magistrate initially awarded possession to Grant-Ross, but the trial court later rejected that decision after considering the transcript and ruled that the transaction was void and possession belonged to Dunsmore. After prior appellate proceedings concerning the absence of a transcript and the nonfinal nature of a judgment that did not resolve Dunsmore's counterclaims, the municipal court entered a final judgment on April 27, 2022. The Sixth District affirmed with modifications, invalidating the nunc pro tunc language and striking the directive requiring Dunsmore to record transfer of possession with the county auditor.

DISPOSITION

affirmed

CASES CITED

- Grant-Ross v. Dunsmore, 2021-Ohio-3509 (Ohio Ct. App. 6th Dist.)
- Natl. Life Ins. Co. v. Kohn, 133 Ohio St. 111, 11 N.E.2d 1020 (1937)
- Quinones v. Botello, 2004-Ohio-3162 (Ohio Ct. App. 6th Dist.)
- Salpietro v. Salpietro, 2023-Ohio-169 (Ohio Ct. App. 6th Dist.)
- Eckart v. Newman, 2019-Ohio-3211 (Ohio Ct. App. 6th Dist.)
- Haas v. Gerski, 175 Ohio St. 327, 194 N.E.2d 765 (1963)
- Behrle v. Beam, 6 Ohio St. 3d 41, 451 N.E.2d 237 (1983)
- Kuhn v. Griffin, 3 Ohio App. 2d 195, 209 N.E.2d 824 (6th Dist. 1964)
- Crafts v. Prior, 51 Ohio St. 21, 36 N.E. 1070 (1894)
- Pitts v. Ohio Dept. of Transp., 67 Ohio St. 2d 378, 423 N.E.2d 1105 (1981)